

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

AMBER N. PIZL,

Plaintiff,

v.

ROADRUNNER TRANSPORTATION
SERVICES, INC., a foreign corporation,

Defendant.

CASE NO. 3:23-cv-6110 DGE

ORDER GRANTING MOTION TO
REMAND

This matter comes before the Court on Plaintiff's Motion to Remand (Dkt. 6), attacking Defendant's Notice of Removal (Dkt. 1).

Plaintiff's Class Action Complaint for Damages (Dkt. 1-1) started this litigation, Defendant promptly filed its Notice of Removal (Dkt. 1), and Plaintiff then filed the Motion to Remand (Dkt. 6).

Plaintiff, in her Complaint (Dkt. 1-1), makes two claims against Defendant: the individual claim of Plaintiff Pizl for violation of the Equal Pay and Opportunities Act ("EPO"), RCW 49.58, and a class action bringing the same claim for a proposed class of individuals in the

1 same situation as Plaintiff Pizl. The issue herein, regarding removal of the case to federal court,
2 must be decided on the individual claim of Plaintiff Pizl, and not on the class action claim.

3 The issue to the Court is narrow - Defendant removes the case based on 28 U.S.C. § 1332
4 because of diversity between Plaintiff and Defendant (which is agreed) and on the amount in
5 controversy exceeding \$75,000.00, the jurisdictional amount for establishing federal court
6 jurisdiction under 28 U.S.C. § 1332. It is this jurisdictional amount that is in controversy here.

7 Defendant alleges, and has the burden of proving by a preponderance of the evidence,
8 that the evidence overcomes the strong presumption against removal jurisdiction, and establishes
9 that federal jurisdiction is proper. Defendant's showing must include "summary judgment-type
10 evidence." *Fritsch v Swift Transp. Co. of Arizona, LLC*, 899 F.3d 785 (9th Cir. 2018).

11 Defendant's primary showing of its position is based on the Declaration of Randall Thompson in
12 Support of Defendant's Opposition to the Plaintiff's Motion to Remand (Dkt. 9). Plaintiff does
13 not offer any evidence in response, but takes the position that Defendant's showing does not
14 establish the \$75,000.00 minimum amount in controversy.

15 Plaintiff argues that "this is a simple case" involving two job postings wherein Defendant
16 did not list any wage scale or salary range, as Plaintiff claims the law requires. Plaintiff seeks
17 the statutory penalties of \$5,000.00 per alleged violation, or \$10,000.00 total. To that amount,
18 Defendant adds attorney's fees to reach an amount in controversy in excess of \$75,000.00.

19 The defense appears, throughout the pleadings, to speculate about what could happen in
20 this litigation. The defense seems to be concerned about events in the class action proceedings
21 that are not relevant here. The defense showing speculates about possible complexities that
22 could arise in the litigation between Plaintiff Pizl and Defendant. The defense speculates about
23 attorney fees amounts and necessary litigation steps in Mr. Thompson's Declaration (Dkt. 9)

1 based only on Mr. Thompson's experience. The defense further speculates about side issues that
2 could come up during litigation.

3 The likely damages, however, are \$10,000.00, based on Plaintiff's Complaint (Dkt. 1-1).
4 Plaintiff's clear intent is to request only those statutory damages from Defendant. As Plaintiff
5 argues, this is a simple case where Plaintiff wishes to take advantage of a perceived violation of a
6 law with statutory penalties.

7 In examining Mr. Thompson's affidavit, (Dkt. 9) and language in Defendant's Opposition
8 to Plaintiff's Motion to Remand (Dkt. 7), we see that counsel adopts a \$415.00 per hour fee and
9 175 hours of legal work for an estimated fee expense of \$72,625.00, for a total amount in
10 controversy of \$82,625.00, or only \$7,675.00 over the jurisdictional amount. We can, for
11 argument purposes, assume that this is Mr. Thompson's "lodestar" figure.

12 There is more to consider: A reasonable attorney's fee is first determined by the lodestar
13 method, which "multiplies an attorney's reasonable hourly rate by the number of hours
14 reasonably expended on the litigation." *Shayler v. 1310 PCH, LLC*, 51 F.4th 1015, 1020 (9th
15 Cir. 2022). Second, "the court determines whether to modify the lodestar figure, upward or
16 downward, based on factors not subsumed in the lodestar figure." *Kelly v. Wengler*, 822 F.3d
17 1085, 1099 (9th Cir. 2016). Those factors include: (1) the time and labor required, (2) the
18 novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal
19 service properly, (4) the preclusion of other employment by the attorney due to acceptance of the
20 case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations
21 imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9)
22 the experience, reputation, and ability of the attorneys, (10) the 'undesirability' of the case, (11)
23 the nature and length of the professional relationship with the client, and (12) awards in similar
24

1 cases. *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 69–70 (9th Cir. 1975)(abrogated on other
2 grounds by *City of Burlington v. Dague*, 505 U.S. 557 (1992)). These factors are consistent with
3 Washington Rule of Professional Conduct 1.5. Mr. Thompson overlooks those fee
4 considerations.

5 What is missing from Mr. Thompson's estimate that might affect his lodestar? Would the
6 amount involved, \$10,000.00, likely result in a reduction in the fee to be charged, based on
7 handing the case to a low-paid associate? Similarly, the experience, reputation, and ability of
8 counsel required does not seem to call for the most experienced and able counsel. No similar
9 awards in similar cases are offered. The time and labor required remain in issue. These
10 outstanding issues, and Mr. Thompson's estimates, offered with nothing more than his
11 experience, leads this Court to conclude that Mr. Thompson's estimate, based on his conclusory
12 allegations, is not credible nor believable as applied to this case. This Court should disregard his
13 conclusion. The amount in controversy proven, therefore, is not above the jurisdictional amount
14 of \$75,000.00.

15 It appears that Defendant's showed an objectively reasonable basis for seeking removal
16 (Mr. Thompson's Declaration, Dkt. 9) even though the Court found it not credible. Fees under
17 28 U.S.C. § 1447(c) are not awardable.

18 Accordingly, it is now ORDERED:

19 Plaintiff's Motion to Remand (Dkt. 6) is hereby GRANTED; and it is further

20 ORDERED that this matter is hereby remanded to the Superior Court in and for Pierce
21 County, Washington.

22 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
23 to any party appearing pro se at said party's last known address.

1 Dated this 27th day of March, 2024.

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4 ROBERT J. BRYAN
United States District Judge